

Remarks/Arguments

Claims 1-16 are pending in this application. Claims 2, 3, 5 and 7-15 are withdrawn from consideration. Claims 1, 4, 6 and 16 are subject to restriction.

The Examiner has maintained Restriction between claims 2, 3, 5 and 7-15. The Examiner has now concluded that Group I as previously indicated is drawn to two patentably distinct inventions:

Restriction to one of the following inventions is required under 35 U.S.C. 1121:

- I. Claim 16, drawn to a compound, classified in class 546, subclass 274.1.
- II. Claims 1, 4, and 6 drawn to a process of preparing, classified in classes 546 and 548, various subclasses.

Applicants elect the invention of Group II for further prosecution in the above application with traverse,

The Examiner has concluded that the inventions are distinct, each from the other because they have acquired a separate status in the art, will support separate patents and will require different fields of search for the respective inventions. The Examiner has further concluded that inventions I and II are unrelated as process of making and product made because the process of Group II produces compounds that are chemically different and that Group II is not drawn to the same scope as Group I

Claim 1 is a generic claim and claims a process for preparing a compound of Formula (I). Claim 16 claims the crystalline form of the compound of formula (II). When in the compound of Formula (I) R^1 is halo substituted phenyl, R^2 is an unsaturated 6 membered ring with 5 carbon atoms and one nitrogen atom, R^3 is arylC₁-C₅alkyl and R^4

is $\begin{array}{c} \diagup \\ \diagdown \end{array} - C \equiv C - (CH_2)_p - X$ the resulting compound is the compound of Formula (II). The compound of Formula (II), therefore, is encompassed by the generic structure of the compounds of Formula (I). Recrystallization of the compound of Formula (I) wherein R^1 , R^2 , R^3 , and R^4 are as defined above, yields one of two crystalline forms referred to in the specification as Form A and Form B. Applicants have claimed the crystalline form designated as form B. This can be seen by the x-ray diffraction data given in claim 16 which corresponds to the x-ray diffraction data described for Form B on page 20 of the specification. The compounds of Formula I and Formula II are not chemically different although they may have different physical properties. It is submitted that the inventions of the Examiner's Group I and Group II are indeed related as process of making and product made because the process of Group II produces the compound of Group I. The fact that the compounds of Group II are not drawn to the same scope of the compound of Group I is of no significance since claim 16 (Group I) claims a single

Docket No. ORT-1592
Serial No. 10/081,553

compound while claim 1 claims a process for preparing several compounds encompassed by the generic Formula (I), including the compound of Formula (II).

Contrary to the conclusion reached by the Examiner, the inventions of Group I and Group II are not distinct from each other, have not acquired a separate status in the art and will not support separate patents.

Reconsideration of the requirement for restriction under 35 U.S.C. 121 is courteously requested.

Respectfully submitted,

By: /John Harbour/
John Harbour
Reg. No. 31,365

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-2169
Dated: June 22, 2005